

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION

JORDAN LEE BLACKWELL,	)	
	)	Civil Action No. 7:20cv00427
Plaintiff,	)	
	)	
v.	)	<b><u>MEMORANDUM OPINION</u></b>
	)	
DR. LAWRENCE WANG,	)	By: Hon. Thomas T. Cullen
	)	United States District Judge
Defendant.	)	

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Jordan Lee Blackwell, a Virginia inmate proceeding *pro se*, filed this action under 42 U.S.C. § 1983, against Nurses Wickers and Hoffman and Dr. Wang, alleging that they failed to provide him with adequate medical care while he was housed at Green Rock Correctional Center (“Green Rock”). By memorandum opinion and order entered February 24, 2022, the court granted the nurses’ motion for summary judgment. (*See* ECF Nos. 45 and 46.) Dr. Wang also filed a motion for summary judgment, arguing that Blackwell has not established that he was deliberately indifferent to a serious medical need. After reviewing the evidence, the court agrees and will grant Dr. Wang’s motion.

## I.

### **A. Blackwell’s Complaint**

Blackwell alleges that on November 4, 2019, he was suffering from “moderate to severe pain” from his “extremely swollen right foot that was oozing pus[.]” (ECF 9, at 3.) He claims that three days later, on November 7, 2019, while he was standing for count procedures, his right foot “exploded[,] causing opening cracks in his skin between his toes and was consistently oozing pus[s] mixed with blood.” (*Id.*) Blackwell states that a correctional officer notified

medical personnel and transported him to the medical clinic in a wheelchair.

In the medical clinic, Dr. Wang examined Blackwell's foot. Blackwell claims that Dr. Wang "did not know what could have caused [Blackwell's] medical condition," but nevertheless prescribed prednisone<sup>1</sup> and Bactrim<sup>2</sup> and placed Blackwell in the medical observation room for seven days. (*Id.* at 4.) On September 14, 2019, Blackwell was released from the medical clinic.

Blackwell states that from September 2019 to July 2020, his "medical condition increased to the point that he had consistent swelling in his arms, feet, face, and on one oc[ca]sion, his eye." (*Id.*) Blackwell states that on every occasion of swelling, Dr. Wang examined Blackwell and prescribed medication. Blackwell argues that the medications were not effective though.

According to Blackwell, in July 2020, a physician's assistant examined him and "highly recommended" that he been seen by a dermatologist. (*Id.*) Blackwell alleges that Dr. Wang "finally expel[l]dited an off-site consult" with a specialist. (*Id.*)

On July 15, 2020, a dermatologist examined Blackwell, diagnosed him with urticaria,<sup>3</sup>

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<sup>1</sup> Prednisone is a corticosteroid that decreases a person's immune system's response to various diseases to reduce symptoms such as swelling and allergic-type reactions. *See* WebMD, Prednisone, <https://www.webmd.com/drugs/2/drug-6007-9383/prednisone-oral/prednisone-oral/details> (last visited Mar. 7, 2022). It is used to treat conditions such as arthritis, blood disorders, breathing problems, severe allergies, skin diseases, eye problems, and immune system disorders. *Id.*

<sup>2</sup> Bactrim is a combination of two antibiotics: sulfamethoxazole and trimethoprim. *See* WebMD, Bactrim, <https://www.webmd.com/drugs/2/drug-5213-9071/bactrim-oral/sulfamethoxazole-trimethoprim-oral/details> (last visited Mar. 7, 2022). It is used to treat a wide variety of bacterial infections, such as middle ear, urine, respiratory, and intestinal infections. *Id.*

<sup>3</sup> Urticaria, also known as hives, are red, itchy welts that result from a skin reaction. *See* Mayo Clinic, Chronic Hives, <https://www.mayoclinic.org/diseases-conditions/chronic-hives/symptoms-causes/syc-20352719> (last visited Mar. 7, 2022).

and prescribed two medications “to minimiz[e] the effects” of his medical condition. (*Id.* at 5.)

Blackwell states that the dermatologist also discontinued the Benadryl that Dr. Wang had prescribed.

Blackwell argues that Dr. Wang is not a licensed physician and that he was deliberately indifferent to Blackwell’s serious medical need of urticaria. He argues that Dr. Wang “intentionally provided a less effective means of treating [Blackwell’s] acute chronic urticaria and its associated etiologies due to [Dr. Wang’s] limited skills and lack of education background and training.” (*Id.* at 7.) Blackwell states that Dr. Wang subjected him to eight months of “suffering.” (*Id.*)

### **B. Dr. Wang’s Motion for Summary Judgment**

In his motion for summary judgment, Dr. Wang asserts that he is, in fact, a licensed medical doctor and that the evidence establishes that he was not deliberately indifferent to Blackwell’s alleged serious medical need. In support of his motion, Dr. Wang provides a declaration, a copy of his medical license record, and Blackwell’s medical records. (*See* ECF No. 38-1.)

In his declaration, Dr. Wang avers that he has been the staff doctor at Green Rock since 2007. Dr. Wang is a medical doctor licensed in the Commonwealth of Virginia. He graduated from Howard University College of Medicine in 1996 and completed a residency in family medicine in 1999. Dr. Wang began treating Blackwell on April 24, 2019, when Blackwell was transferred to Green Rock.

According to Dr. Wang, in Green Rock’s medical clinic, patients are referred to Dr. Wang if they are seen by a nurse and the nursing protocols indicate that the patient should be

referred to a doctor. Between May 18, 2019, and December 28, 2020, Blackwell was seen by medical staff at least 58 times and at least 18 of those occasions were visits with Dr. Wang. The following facts are taken from Dr. Wang's declaration and are based on Blackwell's medical records. (See ECF No. 38-1.)

- On May 8, 2019, Blackwell presented to the medical clinic for an allergy assessment and told Dr. Wang that he experienced throat swelling when eating a sandwich with mayonnaise in 2005, but that he does eat eggs. Although Dr. Wang doubted the presence of an egg allergy, he nonetheless ordered a radioallergosorbent test ("RAST")<sup>4</sup> for further evaluation.
- On May 21, 2019, Blackwell presented to the medical clinic complaining that he was allergic to mayonnaise. Dr. Wang reviewed the record and noted that he had already ordered a RAST on May 8, 2019, and the test was scheduled for May 29, 2019.
- On May 29, 2019, Blackwell's blood was drawn for the egg allergy RAST that Dr. Wang ordered.
- On June 4, 2019, Blackwell presented to the medical clinic complaining that both of his feet began swelling the night before. The nurse noted that Blackwell reported that his feet hurt more in his toes and at the top and heel of his feet. Blackwell advised the nurse that he had an incident before, after he ate shellfish at a previous facility and that he had eaten fish creole several days prior and he noticed the swelling. Blackwell complained that it was painful to walk and that he could barely fasten his shoe. Per the nursing protocols, the nurse ordered ibuprofen three times a day for five days, as needed for pain. She also referred Blackwell to see Dr. Wang.
- On June 6, 2019, Blackwell returned to the medical clinic with ongoing complaints of swollen and painful feet. At that time, a nurse noted that there was "no need to see" Blackwell because he had been seen on June 4 and was already referred to Dr. Wang. (Wang Decl. ¶ 17 [ECF No. 38-1, at 3].)
- On June 7, 2019, Blackwell presented to the medical clinic regarding swelling in his hand. A nurse examined him and noted that he was "talkative and rambling, stating last time he swelled up he had 'eaten shellfish.'" (*Id.* ¶ 18.) The nurse noted that Blackwell's left hand was swollen, red, and hot to touch and that the swelling

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<sup>4</sup> A RAST is a blood test using radioimmunoassay test to detect specific IgE antibodies to determine the substances a subject is allergic to. (Wang Decl. ¶ 13 [ECF No. 38-1, at 2].)

extended up the arm, midway to his elbow. She also noted a purple area on Blackwell's thumb which he said had been a white bump as well as an open abrasion to the top of the thumb. Blackwell reported pain in his hand. After the examination, the nurse called Dr. Wang to obtain orders for the treatment of Blackwell's left-hand pain and swelling. Dr. Wang approved an order for Bactrim to be taken twice a day for 10 days.

- On June 12, 2019, Blackwell presented to the medical clinic for the results of his allergy test and in follow-up for the swelling in his feet. Dr. Wang saw him and advised that the results of the RAST were negative for an egg allergy. Dr. Wang performed a physical examination which was "grossly normal." (*Id.* ¶ 20.) Dr. Wang diagnosed Blackwell with chronic headaches and the possibility of an allergy to shellfish. Dr. Wang ordered another RAST—this time for a shellfish allergy—and renewed Blackwell's prescription for propranolol<sup>5</sup> to be taken twice a day for six months.
- On June 19, 2019, labs were drawn for the RAST test for shellfish allergy.
- On July 10, 2019, Blackwell presented to the medical clinic complaining of an ingrown toenail. A nurse examined him and noted that he had athlete's foot and an ingrown toenail on the "great toe" of his right foot, with itching and cracking between the toes. (*Id.* ¶ 22.) Per the nursing protocols, the nurse ordered antifungal cream to treat the athlete's foot and referred Blackwell to Dr. Wang for further evaluation of the ingrown toenail, which was red and tender to touch.
- On August 2, 2019, Blackwell presented to the medical clinic in follow-up for his ingrown toenail. Dr. Wang saw him and diagnosed him with chronic ingrown toenail at the "lateral aspect of the right great toe without swelling." (*Id.* ¶ 24.) After using lidocaine to numb the toe, Dr. Wang removed 10% of the ingrown toenail. Following the procedure, Dr. Wang applied salicylic acid and a topical antibiotic dressing.
- On August 10, 2019, Blackwell presented to the medical clinic complaining of a bug bite which he said he received while in the recreation yard. He was examined by a nurse who noted that the right side of Blackwell's face was swollen and red. Blackwell denied any burning sensation but stated that the area itched. Per the nursing protocols, the nurse ordered Benadryl<sup>6</sup> to relieve Blackwell's itching and

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<sup>5</sup> Propranolol is a beta blocker used to treat high blood pressure, irregular heartbeats, shaking (tremors), and other conditions. See WebMD, Propranolol HCL, <https://www.webmd.com/drugs/2/drug-10404-9168/propranolol-oral/propranolol-oral/details> (last visited Mar. 7, 2022).

<sup>6</sup> Benadryl is an antihistamine used to relieve symptoms of allergy, hay fever, and the common cold. See WebMD, Benadryl, <https://www.webmd.com/drugs/2/drug-5680/benadryl-oral/details> (last visited Mar. 7, 2022). These symptoms include rash, itching, watery eyes, itchy eyes/nose/throat, cough, runny nose, and

swelling.

- On August 11, 2019, Blackwell was seen by a nurse for continued redness and swelling in his face. Per the nursing protocols, the nurse ordered Benadryl to be taken twice a day for three days. She also referred Blackwell to Dr. Wang for further evaluation.
- On August 12, 2019, Blackwell presented to the medical clinic complaining that his face was still swollen and not getting better. Upon exam, a nurse noted that Blackwell had swelling to his bottom lip and the left side of his face. Blackwell reported having trouble eating but denied trouble breathing or swallowing. The nurse referred Blackwell to Dr. Wang for further evaluation. Dr. Wang ordered prednisone to be taken twice a day for seven days and increased his dosage of Benadryl to be taken twice a day for seven days.
- On September 10, 2019, Blackwell presented to the medical clinic complaining of foot pain and “pins and needles” for a “long time.” (*Id.* ¶ 30.) Blackwell reported that the sensation would wake him up at night and that the insoles in his boots were thin. After examination and per the nursing protocols, a nurse ordered Tylenol to be taken three times a day, as needed, for five days and referred Blackwell for follow-up with Dr. Wang.
- On September 26, 2019, Blackwell presented to the medical clinic for Dr. Wang’s evaluation of his pain in both of his feet. Upon physical examination, Dr. Wang found no swelling or significant deformity to Blackwell’s feet. After noting Blackwell’s foot pain and history of allergy, Dr. Wang prescribed gel insoles, Claritin<sup>7</sup> to be taken daily for three months, and ibuprofen to be taken twice a day, as needed, for two months.
- On October 4, 2019, Blackwell presented to the medical clinic complaining of a swollen right eye. Blackwell advised a nurse that he had had a “similar issue with foot two weeks [prior].” (*Id.* ¶ 32.) He stated that in the past, he had required prednisone. Per the nursing protocols, the nurse ordered Benadryl to be taken twice a day for five days and referred Blackwell for a follow-up with Dr. Wang.
- On October 8, 2019, Blackwell presented to the medical clinic for a follow-up with Dr. Wang about his eye swelling. Blackwell reported to Dr. Wang that the swelling had occurred but was not present at that time. Upon physical examination, Dr.

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sneezing. *Id.*

<sup>7</sup> Claritin is an antihistamine that treats symptoms such as itching, runny nose, watery eyes, and sneezing from “hay fever” and other allergies. See WebMD, Claritin Tablet, <https://www.webmd.com/drugs/2/drug-5346/claritin-oral/details> (last visited Mar. 7, 2022). It is also used to relieve itching from hives. *Id.*

Wang noted that the eye appeared normal, with no swelling and only “mild erythema.” (*Id.* ¶ 33.) Dr. Wang diagnosed “[m]ild eye irritation” and ordered Pred Forte<sup>8</sup> eye drops, one drop to the right eye twice a day for one week. (*Id.*)

- On October 18, 2019, Blackwell was given the gel insoles that had been ordered on September 26 to treat his foot pain.
- On October 23, 2019, Blackwell reported to the medical clinic that he never received the eye drops that were ordered by Dr. Wang on October 8. A nurse noted that he would speak with Dr. Wang about placing the order again or discontinuing it.
- On October 30, 2019, Dr. Wang reordered the Pred Forte eye drops to be given one drop to the right eye twice a day for one week.
- On November 1, 2019, Blackwell reported to the medical clinic that his gel insoles had been thrown out during a shakedown of his cell. A nurse provided Blackwell with new insoles.
- On November 7, 2019, Blackwell presented to the medical clinic complaining that his right foot was “swollen and draining clear fluid.” (*Id.* ¶ 38.) A nurse examined Blackwell and noted swelling to his right foot “with bruising noted to great toe joint to medial side” and “bleeding from cracked skin” on his fifth toe of his right foot. (*Id.*) The nurse referred Blackwell to Dr. Wang for further evaluation.
- On November 7, 2019, Dr. Wang examined Blackwell regarding his complaint of right foot swelling for one day. He noted “ecchymosis at the medial aspect of Blackwell’s large toe”; a blister measuring 1 cm x 1.5 cm on his fifth toe; and a “small cut[-]like lesion” measuring 1 cm on the top of his fifth toe. (*Id.* ¶ 39.) Dr. Wang diagnosed Blackwell with right foot swelling and an infection. Dr. Wang had Blackwell admitted for medical observation and ordered Bactrim to be taken twice a day for ten days and prednisone to be taken twice a day for seven days.
- On November 7, 2019, a nurse noted that Blackwell’s right foot and ankle were swollen, that there was a “line above [his] toes with small amount of redness and weeping,” and bruising to Blackwell’s inner foot, near the “great toe.” (*Id.* ¶ 40.) On the same day, another nurse noted that Blackwell had right foot edema, a “blister, clear in color” at Blackwell’s small toe, and two blood blisters to the “medial side

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<sup>8</sup> Pred Forte is a brand of prednisolone and is used to treat certain eye conditions due to inflammation or injury. WebMD, Pred Forte Suspension, <https://www.webmd.com/drugs/2/drug-8564/pred-forte-ophthalmic-eye/details> (last visited Mar. 7, 2022). The medication relieves symptoms such as swelling, redness, and itching. (*Id.*)

of his great toe.” (*Id.* ¶ 41.) The nurse gave Blackwell ibuprofen for pain.

- On November 8, 2019, a nurse noted “no weeping” of Blackwell’s right foot and that the blood blisters on the medial side of the right great toe were still intact. (*Id.* ¶ 42.) That same day, another nurse noted that Blackwell reported 7/10 pain in his right foot. Upon examination, the nurse noted swelling and redness of his right foot and ankle. She also found intact scabs on small areas on top of the foot, behind the toes, with no drainage or weeping. She noted the bruising to the inside of his right foot, on the side of the toe.
- On November 9, 2019, a nurse examined Blackwell and found that his right foot was still warm to the touch, but the edema had subsided significantly and there was no weeping. Blackwell told the nurse that “[a]fter the first couple of doses of prednisone, it always looks better.” (*Id.* ¶ 44.) That same day, another nurse noted that Blackwell reported 7/10 pain. Upon examination, she found his foot “slightly swollen to top part” with no drainage or odor. (*Id.* ¶ 45.) The bruising remained on his great toe and the side of his foot over the little toe. Blackwell voiced no other complaints.
- On November 10, 2019, upon physical examination, a nurse noted “2+ edema” on the “lateral side of the fifth toe (1 cm) and the medial side of the first toe (2 cm), but no drainage or bleeding.” (*Id.* ¶ 47.) Later that day, Blackwell asked to be released from medical observation and returned to his cell. A nurse noted that his right foot was healing, the scabbed areas were dry, there was no drainage, and there was “very minimal” swelling remaining to the top of the foot at the fifth toe. (*Id.* ¶ 48.) She also noted that his “lateral great toe” remained bruised. (*Id.*) Before releasing Blackwell back to general population, the nurse instructed him on medication compliance and told him to continue his present prescription medications. She also noted that Blackwell ambulated without difficulty and was fully weight-bearing. The nurse told Blackwell that Dr. Wang wanted him to follow-up as necessary.
- On December 28, 2019, Blackwell presented to the medical clinic. A nurse noted that he did not need to be seen for his previously treated foot issues, but that he complained of his left arm being swollen and warm to the touch. The nurse noted that neither she nor another nurse discerned any swelling of Blackwell’s left arm upon examination, and that both arms were an even temperature. Blackwell reported having pain in his left wrist and stated that he did not want the “cellulitis that affected his foot” to start in his arm. (*Id.* at ¶ 50.) The nurse advised Blackwell that this did not appear to be the case. Per the nursing protocols, the nurse gave Blackwell one dose of ibuprofen. She also advised him to alert staff if his pain increased or if swelling was noted in the left arm.

- On December 30, 2019, Blackwell presented to the medical clinic complaining that his right foot was swollen and painful. He reported to staff that his right second toe had been “red, swollen, [and] painful [for two] days.” (*Id.* ¶ 51.) Upon examination, a nurse noted that Blackwell’s right second toe was “slightly red [and] swollen,” with minimal swelling, full range of motion, and no open areas or signs of infection. (*Id.*) The nurse also noted that Blackwell was ambulating without difficulty. She entered orders for Blackwell to be given ibuprofen three times a day for five days and referred him to Dr. Wang for further evaluation. She also addressed with Blackwell his medication compliance rate, which per the medical records was 47.6% with regard to Buspar<sup>9</sup> and 47.1% with regard to Remeron.<sup>10</sup> After their discussion, Blackwell expressed his understanding as to taking his medications as prescribed, signing a refusal form if he did not wish to do so, or speaking with mental health staff with regard to his medication. Blackwell asked to have his medications renewed at his next doctor appointment.
- On January 2, 2020, Blackwell presented to the medical clinic complaining of swelling in his right foot and right hand. Upon examination, the nurse noted swelling to the right hand with the “difficulty affecting his index, middle, and ring fingers” and “purple discoloration” on the bottom of the finger joints “with small dots that have purple discoloration.” (*Id.* ¶ 52.) Blackwell reported that his pain was at a level 7/10 while he was at rest. The nurse also noted a “large blister to [the] medial arch” of his right foot, but that the swelling was down. (*Id.*) Blackwell stated that the “swelling increases, then goes down.” (*Id.*) The nurse ordered Tylenol to be taken as needed for pain for five days and referred Blackwell to be seen by Dr. Wang.
- On January 3, 2020, Dr. Wang saw Blackwell for his medication renewal and right foot and hand issues. Blackwell requested propranolol for headaches and complained of blisters on his right foot and swelling of his right hand. Upon physical examination, Dr. Wang noted a 2 cm blister containing “clear fluid” on Blackwell’s right foot. (*Id.* ¶ 53.) Dr. Wang also noted swelling of his third finger with a <0.3 cm scab and erythema on Blackwell’s right hand. Dr. Wang diagnosed Blackwell with a blister on the right foot and cellulitis of the right hand and prescribed Bactrim and prednisone, both to be taken twice a day for seven days.
- On January 8, 2020, Blackwell reported that he had “no need to be seen” in follow-

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<sup>9</sup> Buspar is a medication for anxiety (anxiolytic) that works by affecting certain natural substances in the brain (neurotransmitters). See WebMD, Buspar Tablet, <https://www.webmd.com/drugs/2/drug-9036/buspar-tablet/details> (last visited Mar. 7, 2022).

<sup>10</sup> Remeron is an antidepressant that works by restoring the balance of natural chemicals (neurotransmitters) in the brain. See WebMD, Remeron Tablet, <https://www.webmd.com/drugs/2/drug-13707/remeron-tablet/details> (last visited Mar. 7, 2022).

up to his January 3 appointment. (*Id.* ¶ 54.)

- On January 16, 2020, Blackwell presented to the medical clinic complaining that he woke up with his eye swollen. He denied any injury to the eye. Upon examination, the nurse noted that his eye was visibly red and swollen. The nurse advised Blackwell to apply warm compresses to the eye and, per the nursing protocols, ordered Benadryl to be taken twice a day for three days. The nurse also referred Blackwell to Dr. Wang for follow-up in regard to “recurring swelling of face, feet[, and] hands.” (*Id.* ¶ 56.)
- On January 27, 2020, Dr. Wang saw Blackwell for evaluation of his swollen right eye and recurring face, feet, and hand complaints. Dr. Wang noted that he had “intermittent swelling of different parts of body.” (*Id.* ¶ 57.) Blackwell asked for a referral to a specialist. Dr. Wang performed a physical examination, which was “grossly normal,” and diagnosed him with “questionable angioedema” (swelling, usually localized, of the subcutaneous tissues). (*Id.*) Dr. Wang ordered bloodwork to assess his condition to include a “complete blood count, a comprehensive metabolic panel, an antibody test, sedimentation rate, and protein C4 test.” (*Id.*)
- On February 6, 2020, Blackwell’s blood was drawn for the lab work Dr. Wang ordered.
- On February 8, 2020, Blackwell presented to the medical clinic complaining of left foot swelling and blisters that had started the night before. A nurse noted that Blackwell “talks nonstop about needing outside consult.” (*Id.* ¶ 59.) Upon physical examination she found “2+ edema” to the top of Blackwell’s left foot, with “2 small blisters with clear fluid” noted to his second and third toes. (*Id.*) Blackwell stated that he needed “something for pain.” (*Id.*) The nurse referred Blackwell to be seen by Dr. Wang and in the meantime, ordered Tylenol to be given twice a day for five days. Due to a decline in his compliance with his medications, the nurse instructed Blackwell to come to the pill window to receive the Tylenol as prescribed. She noted that upon leaving the medical clinic, Blackwell ambulated without difficulty.
- On February 21, 2020, Dr. Wang saw Blackwell in follow-up to his left-foot complaints from his February 8 appointment. At the appointment, Blackwell also reported elbow pain. Upon physical examination, Dr. Wang noted normal range of motion and no swelling of the elbow joint. Nevertheless, he discontinued the previous order for ibuprofen and instead ordered Naprosyn<sup>11</sup> to be taken twice a

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<sup>11</sup> Naprosyn is a nonsteroidal anti-inflammatory drug (NSAID) that works by blocking your body’s production of certain natural substances that cause inflammation. See WebMD, Naprosyn Tablet, <https://www.webmd.com/drugs/2/drug-1705-1289/naprosyn-oral/naproxen-oral/details> (last visited Mar. 7, 2022). It is used to relieve pain from various conditions such as headache, muscle aches, tendonitis, dental pain, and menstrual cramps. *Id.* It also reduces pain, swelling, and joint stiffness caused by arthritis, bursitis, and gout

day, as needed, for two months.

- On March 8, 2020, Blackwell presented to the medical clinic complaining of “mouth swelling.” (*Id.* ¶ 61.) Upon physical examination, the nurse noted Blackwell’s left lower lip to be swollen. Blackwell stated that the swelling started after breakfast. Per the nursing protocols, the nurse administered a dose of Benadryl and, per verbal order from Dr. Wang, ordered Benadryl to be taken twice a day for three days.
- On March 9, 2020, Blackwell presented to the medical clinic complaining of a rash under his right eye. The nurse advised him to follow up if his rash was not better when he finished the allergy protocol started a day earlier.
- On March 11, 2020, Blackwell returned to the medical clinic to be seen by Dr. Wang regarding his “mouth swelling.” (*Id.* ¶ 63.) Dr. Wang remarked that it still appeared to be an “allergy issue,” but again raised the possibility that the symptoms represented angioedema. (*Id.*) Dr. Wang ordered a referral to a dermatologist for further evaluation.
- On March 12, 2020, Blackwell was scheduled for a consultation with Dr. Gross of Piedmont Dermatology.
- On March 18, 2020, Dr. Wang ordered Blackwell’s dermatology appointment be put on hold due to COVID-19.
- On March 29, 2020, Blackwell presented to the medical clinic with complaint of an “allergic skin reaction” and the nurse noted “redness and swelling” to Blackwell’s left forearm. (*Id.* ¶ 66.) Blackwell reported itching at the site. Per the nursing protocols, the nurse ordered hydrocortisone cream<sup>12</sup> to be applied twice daily, and Benadryl to be taken twice a day for three days.
- On April 3, 2020, Blackwell was seen by Dr. Wang for renewal of his prescriptions for ibuprofen and Claritin. No complaints were noted. Dr. Wang performed a physical examination, the results of which were “grossly normal.” (*Id.* ¶ 67.) Dr. Wang recorded Blackwell’s diagnoses as (1) allergy and (2) chronic pain. Dr. Wang prescribed Claritin to be taken daily for six months and changed the ibuprofen to

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attacks. *Id.*

<sup>12</sup> Hydrocortisone cream is a mild corticosteroid used to treat a variety of skin conditions, such as insect bites, poison oak/ivy, eczema, dermatitis, allergies, and rashes. See WebMD, Hydrocortisone Cream, <https://www.webmd.com/drugs/2/drug-10402-859/hydrocortisone-topical/hydrocortisone-topical/details> (last visited Mar. 7, 2022). Hydrocortisone reduces the swelling, itching, and redness that can occur in these types of conditions. *Id.*

Naprosyn to be taken twice a day, as needed, for two months.

- On April 15, 2020, Blackwell presented to the medical clinic complaining of “[f]eet pain/arm swelling.” (*Id.* at ¶ 68.) The nurse noted that the back of Blackwell’s left wrist was swollen and warm.” Blackwell reported that his feet were “tingling.” (*Id.*) Dr. Wang examined Blackwell’s arm at that time and confirmed the previous referral to a dermatologist for further evaluation.
- On May 2, 2020, Blackwell presented to the medical clinic complaining of left-hand swelling. The nurse noted that Blackwell’s left hand was red and swollen. Blackwell informed her that “there have been prior incidents of other body parts swelling randomly” and that this had begun about 1.5 years ago.” (*Id.* ¶ 69.) The nurse noted that, due to COVID-19, Blackwell had not yet been able to go to a dermatology consult but was still planned to do so. Per the nursing protocols, the nurse administered Benadryl and applied an ace bandage wrap to his hand. Per a verbal order from Dr. Wang, Blackwell was prescribed Benadryl to be taken twice a day for three days.
- On May 4, 2020, Blackwell presented to the medical clinic for evaluation of “facial swelling.” Blackwell saw Dr. Wang, who noted mild swelling to the right side of Blackwell’s face and, once again, diagnosed angioedema. (*Id.* ¶ 70.) Dr. Wang ordered a course of prednisone to be taken twice a day for seven days.
- On May 6, 2020, Blackwell returned to the medical clinic for what he reported to the triage nurse to be a swollen left hand, but when seen by Dr. Wang, he instead complained of right-toe pain. Upon physical examination, Dr. Wang found no swelling present and noted Blackwell’s gait to be normal. Dr. Wang diagnosed right-foot pain and, since Blackwell already had a prescription for Naprosyn, he ordered Tylenol to be taken twice a day, as needed, for one month.
- On May 22, 2020, Blackwell presented to the medical clinic complaining of a rash. The nurse noted milia (tiny white bumps) on his abdomen and left arm. Blackwell reported that the previously prescribed hydrocortisone cream did not help. The nurse referred Blackwell to Dr. Wang for further evaluation and, in the meantime, ordered Chlor-Trimeton<sup>13</sup> to be taken as needed, three times a day for five days.
- On May 27, 2020, Blackwell presented to the medical clinic to be evaluated by Dr. Wang regarding his rash. He reported “intermittent rash” on his right and left arms.

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<sup>13</sup> Chlor-Trimeton is an antihistamine that works by blocking a certain natural substance (histamine) that a person’s body makes during an allergic reaction. See WebMD, Chlor-Trimeton, <https://www.webmd.com/drugs/2/drug-12210/chlor-trimeton-oral/details> (last visited Mar. 7, 2022). It is used to relieve symptoms of allergy, hay fever, and the common cold. *Id.* These symptoms include rash, watery eyes, itchy eyes/nose/throat/skin, cough, runny nose, and sneezing. *Id.*

(*Id.* ¶ 73.) Upon physical examination, Dr. Wang noted mild erythema of Blackwell's right arm; no rash was present on the left arm. At that appointment, Dr. Wang diagnosed urticaria, "which is a skin reaction characterized by hives and/or angioedema, the cause of which can be certain allergens but may also be undeterminable," and ordered that Blackwell be placed on Benadryl to be taken twice a day for three weeks. (*Id.*)

- On June 17, 2020, Blackwell presented to the medical clinic stating that his left foot was "swollen twice its size" and that he had "various joint swelling with erythema." (*Id.* ¶ 74.) Upon physical examination, the physician assistant ("PA") noted that Blackwell's left "great toe" was inflamed and painful, with skin sensitivity. (*Id.*) Upon questioning, Blackwell denied any tick bites or history of Lupus. The PA ordered the immediate administration of prednisone, to be followed by daily doses for 10 days. She also ordered lab work and Benadryl to be taken every twelve hours as needed.
- On June 25, 2020, Blackwell's blood was drawn for the lab work ordered by the PA.
- On July 9, 2020, Blackwell's consultation at Piedmont Dermatology was rescheduled for July 15, 2020.
- On July 10, 2020, Blackwell presented to the medical clinic complaining of a "raised, red, itchy area" on his left upper thigh. (*Id.* ¶ 77.) Physical examination by the nurse revealed a large, 10 cm circular red area. Because Blackwell's dermatology appointment was already scheduled, no referral was given to see Dr. Wang at that time. But per a verbal order by Dr. Wang, a prescription was entered for Benadryl to be taken twice a day for seven days. Dr. Wang also renewed Blackwell's prescriptions for Claritin to be taken daily for six months, Naprosyn to be taken twice a day as needed for 3 months, and propranolol to be taken twice a day for 6 months.
- On July 15, 2020, Blackwell was seen by Dr. Gross of Piedmont Dermatology regarding his mouth swelling, eye swelling, and left-foot edema. Like Dr. Wang, Dr. Gross diagnosed Blackwell with urticaria and explained to him that it is hard to find a cause in most cases. Dr. Gross recommended that Blackwell's prescriptions for Benadryl and his antidepressant be discontinued and replaced with loratadine (Claritin) every morning and cetirizine<sup>14</sup> (Zyrtec) every evening. Dr. Gross advised that these dosages could be reduced "when [his condition had] improved for a

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<sup>14</sup> Cetirizine is an antihistamine that works by blocking a certain natural substance (histamine) that your body makes during an allergic reaction. See WebMD, Cetirizine HCL, <https://www.webmd.com/drugs/2/drug-12065/cetirizine-oral/details> (last visited Mar. 7, 2022). It is used to relieve allergy symptoms such as watery eyes, runny nose, itching eyes/nose, sneezing, hives, and itching. *Id.* Zyrtec is a brand name of cetirizine. *Id.*

while.” (*Id.* ¶ 79.) Dr. Gross recommended to Blackwell that he should use gentle, fragrance-free cleansers and moisturizers; wash with Dove bar soap; wear daily sunscreen; and avoid sunlight between 10:00 a.m. and 4:00 p.m. Dr. Gross also recommended that Blackwell keep a diary of the occurrence of his hives, paying attention to foods, contactants, and activities in the 30 minutes prior to an outbreak. He instructed that Blackwell should follow up in one month or when needed.

- Blackwell returned to Green Rock the same day and was placed in quarantine for 14 days per the facility’s COVID-19 protocol. That same day, a nurse at Green Rock received a call from Dr. Gross’s office and was advised that Dr. Gross had forgotten to send a recommendation for “Dove Bar sensitive and CeraVe cream cleaner.” (*Id.* ¶ 80.) The nurse placed the health services consultation report on Blackwell’s chart for Dr. Wang’s review. Later that day, Dr. Wang reviewed the records from Blackwell’s dermatology consult. Per Dr. Gross’s recommendations, Dr. Wang discontinued Blackwell’s prescriptions for Remeron and Benadryl, and ordered Claritin to be taken in the morning and Zyrtec to be taken in the evening, both for one month.
- On July 16, 2020, Blackwell presented to the medical clinic complaining that his second toe of his right foot was “swollen and draining from under the nail when pressed.” (*Id.* ¶ 82.) The nurse examined him and found the toe to be swollen with no active drainage noted. She referred Blackwell to be seen by Dr. Wang.
- On July 20, 2020, Blackwell returned to the medical clinic for evaluation by Dr. Wang regarding the drainage from his toenail bed. Upon physical examination, Dr. Wang noted “no draining now” with “very mild erythema” of the second toe, no swelling, and no signs of infection. (*Id.* at ¶ 83.) Dr. Wang diagnosed Blackwell with “irritation” of the right second toe and instructed Blackwell to return as needed. (*Id.*)
- On September 11, 2020, Blackwell saw Dr. Wang regarding lab work. In light of Blackwell’s history of tattoos, Dr. Wang ordered a Hepatitis C antibody test.
- On September 21, 2020, Blackwell’s blood was drawn for the lab work ordered by Dr. Wang on September 11.
- On October 15, 2020, Dr. Wang renewed Blackwell’s prescription for Naprosyn to be taken twice a day, as needed, for three months.
- On October 20, 2020, Blackwell presented to the medical clinic complaining of an ingrown toenail which “need[ed] to be] removed.” (*Id.* ¶ 87.) He also reiterated his claim of being allergic to mayonnaise and requested new insoles. A nurse referred Blackwell for examination by Dr. Wang. Dr. Wang noted no erythema or swelling

around the toenail but told him to return in two weeks for a recheck. Dr. Wang also recorded that there was “[n]o issue of allergy” regarding mayonnaise. (*Id.*)

- On November 9, 2020, Blackwell returned to the medical clinic to follow up with Dr. Wang regarding his right great toenail. Dr. Wang examined the toe and found the skin to be normal, with no sign of infection. Dr. Wang diagnosed the nail as being “chronic ingrown” and ordered the scheduling of a 30-minute, non-urgent appointment. (*Id.* ¶ 88.) Dr. Wang renewed the order for Blackwell’s gel insoles. Dr. Wang discussed Blackwell’s claim of a mayonnaise allergy; Blackwell expressed his desire for a special diet, but because his RAST tests had been negative, Dr. Wang found no indication for a special diet. Dr. Wang did, however, recommend a dermatology follow up for a “possible allergy test.” (*Id.*)
- On November 13, 2020, Blackwell presented to the medical clinic complaining about “[r]ash/hives to the groin area.” (*Id.* ¶ 89.) He reported that the site was “itchy and irritated.” (*Id.*) Per the nursing protocols, the nurse ordered hydrocortisone cream to be applied twice daily for five days. She also referred Blackwell for evaluation by Dr. Wang.
- On November 16, 2020, Blackwell presented to the medical clinic complaining of a “dry scalp” that he claimed he had been suffering from for months. (*Id.* ¶ 90.) He reported that his scalp was bleeding at times. The nurse referred Blackwell for evaluation by Dr. Wang.
- On December 28, 2020, Blackwell presented to the medical clinic for a change of the dressing on his right big toe. A nurse noted that the area was clean with no redness. A band aid was applied.
- On January 6, 2021, Dr. Wang renewed Blackwell’s prescription for propranolol to be taken twice a day for six months.
- On January 7, 2021, Dr. Wang renewed Blackwell’s prescriptions for Zyrtec and Claritin, both to be taken daily for six months. Dr. Wang also renewed Blackwell’s prescription for Naprosyn to be taken twice a day, as needed, for three months.
- On February 2, 2021, Dr. Wang ordered “Therapeutic T shampoo” for Blackwell to use.

### **C. Blackwell’s Response in Opposition**

In response to Dr. Wang’s motion for summary judgment, Blackwell submitted an unverified statement, summarily arguing that Dr. Wang was deliberately indifferent to his

medical need by not giving him “proper and adequate medication treatment.” (ECF No. 42, at 1.)

## II.

Federal Rule of Civil Procedure 56(a) provides that a court should grant summary judgment “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” “As to materiality, . . . [o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Summary judgment is inappropriate “if the dispute about a material fact is ‘genuine,’ that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Id.*; see also *JKC Holding Co. v. Wash. Sports Ventures, Inc.*, 264 F.3d 459, 465 (4th Cir. 2001). But if the evidence of a genuine issue of material fact “is merely colorable or is not significantly probative, summary judgment may be granted.” *Anderson*, 477 U.S. at 249–50 (internal citations omitted). In considering a motion for summary judgment under Rule 56, a court must view the record as a whole and draw all reasonable inferences in the light most favorable to the nonmoving party. *See id.* at 255; *Shaw v. Stroud*, 13 F.3d 791, 798 (4th Cir. 1994). The non-moving party may not rely on beliefs, conjecture, speculation, or conclusory allegations to defeat a motion for summary judgment. *Baber v. Hosp. Corp. of Am.*, 977 F.2d 872, 874–75 (4th Cir. 1992). The evidence relied on must meet “the substantive evidentiary standard of proof that would apply at a trial on the merits.” *Mitchell v. Data Gen. Corp.*, 12 F.3d 1310, 1315–16 (4th Cir. 1993) (“The summary judgment inquiry thus scrutinizes the plaintiff’s case to determine whether the plaintiff has proffered sufficient proof, in the form of admissible

evidence, that could carry the burden of proof of his claim at trial.”); *Sakaria v. Trans World Airlines*, 8 F.3d 164, 171 (4th Cir. 1993) (finding that the district court properly did not consider inadmissible hearsay in an affidavit filed with motion for summary judgment).

### III.

Blackwell alleges that Dr. Wang failed to provide adequate medical treatment for his urticaria. But Blackwell has not established that Dr. Wang was deliberately indifferent to a serious medical need and, therefore, the court will grant his motion for summary judgment.

To establish a cognizable Eighth Amendment claim for denial of medical care, a plaintiff must put forth facts sufficient to demonstrate that an official was deliberately indifferent to a serious medical need. *Estelle v. Gamble*, 429 U.S. 97, 105 (1976); *Conner v. Donnelly*, 42 F.3d 220, 222 (4th Cir. 1994); *Staples v. Va. Dep’t of Corr.*, 904 F. Supp. 487, 492 (E.D. Va. 1995). A prison official is “deliberately indifferent” only if he or she “knows of and disregards an excessive risk to inmate health or safety.” *Farmer v. Brennan*, 511 U.S. 825, 837 (U.S. 1994). A claim concerning a mere disagreement between an inmate and medical personnel regarding diagnosis or course of treatment does not implicate the Eighth Amendment. *Wright v. Collins*, 766 F.2d 841, 849 (4th Cir. 1985); *Russell v. Sheffer*, 528 F.2d 318, 319 (4th Cir. 1975); *Harris v. Murray*, 761 F. Supp. 409, 414 (E.D. Va. 1990). In fact, “many acts or omissions that would constitute medical malpractice will not rise to the level of deliberate indifference.” *Jackson v. Lightsey*, 775 F.3d 170, 178 (4th Cir. 2014). An “error of judgment” on the part of prison medical staff or “inadvertent failure to provide adequate medical care,” while perhaps sufficient to support an action for malpractice, does not constitute a constitutional deprivation redressable under § 1983. *Boyce v. Alizaduh*, 595 F.2d

948, 953 (4th Cir. 1979), *abrogated on other grounds by Neitzke v. Williams*, 490 U.S. 319 (1989).

Mere negligence does not constitute deliberate indifference; rather, a prison official must both be aware of the facts from which the inference could be drawn that a substantial risk of harm exists *and* must draw the inference. *Johnson v. Quinones*, 145 F.3d 164, 167 (4th Cir. 1998); *see also Farmer*, 511 U.S. at 837. The prison official's conduct must be so grossly incompetent, inadequate, or excessive as to shock the conscience or to be intolerable to fundamental fairness. *Militier v. Beorn*, 896 F.2d 848, 851 (4th Cir. 1990).

Intentional delay of, or interference with, medical treatment can also amount to deliberate indifference. *See Formica v. Aylor*, 739 F. App'x 745, 755 (4th Cir. 2018); *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006). The Fourth Circuit, however, has held that there is “no Eighth Amendment violation unless ‘the delay results in some substantial harm to the patient,’ such as a ‘marked’ exacerbation of the prisoner’s medical condition or ‘frequent complaints of severe pain.’” *Formica*, 739 F. App'x at 755 (citing *Webb v. Hamidullah*, 281 F. App'x 159, 166–67 (4th Cir. 2008)); *see also Shame v. S.C. Dep’t of Corr.*, 621 F. App'x 732, 734 (4th Cir. 2015) (“A delay in treatment may constitute deliberate indifference if the delay exacerbated the injury or unnecessarily prolonged an inmate’s pain.” (internal quotation marks omitted)). Substantial harm may also be ““a lifelong handicap or permanent loss.”” *Coppage v. Mann*, 906 F. Supp. 1025, 1037 (E.D. Va. 1995) (quoting *Monmouth Co. Corr. Inst. Inmates v. Lanzaro*, 834 F.2d 326, 347 (3d Cir. 1987)). “[T]he length of delay that is tolerable depends on the seriousness of the condition and the ease of providing treatment.” *Id.* at 758 (quoting *McGowan v. Hulick*, 612 F.3d 636, 640 (7th Cir. 2010)) (emphasis added).

In the six months leading up to the November 7 incident where Blackwell’s foot

allegedly “exploded,” Blackwell was seen in the medical clinic 19 times, at least 5 of which were by Dr. Wang. In the eight months between the incident and the time Blackwell saw a dermatologist, Blackwell was evaluated by medical staff 30 times, at least 10 of which were by Dr. Wang. And, in the five months following his dermatologist appointment, Blackwell was seen nine times in the medical clinic, at least three of which were by Dr. Wang. During this approximately year and a half, Dr. Wang personally examined Blackwell at least 18 times, reviewed his medical records even more frequently, ordered multiple lab tests, made several diagnoses, and prescribed numerous medications at varying doses and combinations. Although Blackwell may disagree with Dr. Wang’s course of treatment, a disagreement between a doctor and patient over treatment is not actionable under § 1983. *See Wright*, 766 F.2d at 849. Further, to the extent that Dr. Wang delayed referring Blackwell to a dermatologist, the court notes that Dr. Wang was providing treatment during the interim. Moreover, even after the dermatologist appointment, Blackwell continued to seek (and receive) treatment from the medical clinic and Dr. Wang for related symptoms. Nothing in the extensive—and undisputed—medical records suggests that Dr. Wang’s treatment of Blackwell was “so grossly incompetent, inadequate, or excessive as to shock the conscience or to be intolerable to fundamental fairness.” *See Militier*, 896 F.2d at 851. Based on the forgoing, the court cannot find that Dr. Wang was deliberately indifferent to a serious medical need of Blackwell.

**IV.**

For the reasons stated, the court will grant Dr. Wang's motion for summary judgment.

The clerk is directed to forward a copy of this memorandum opinion and accompanying order to the parties.

**ENTERED** this 14th day of March, 2022.

*/s/ Thomas T. Cullen*  
HON. THOMAS T. CULLEN  
UNITED STATES DISTRICT JUDGE